(121)

UNITED
NATIONS

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Economic and Social Council

Distr.
GENERAL

E/CN.4/1992/NGO/8
29 January 1992

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS
Forty-eighth session
Agenda item 7

QUESTION OF THE REALIZATION IN ALL COUNTRIES OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND IN THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, AND STUDY OF SPECIAL PROBLEMS WHICH THE DEVELOPING COUNTRIES FACE IN THEIR EFFORTS TO ACHIEVE THESE HUMAN RIGHTS, INCLUDING: PROBLEMS RELATED TO THE RIGHT TO ENJOY AN ADEQUATE STANDARD OF LIVING; FOREIGN DEBT, ECONOMIC ADJUSTMENT POLICIES AND THEIR EFFECTS ON THE FULL ENJOYMENT OF HUMAN RIGHTS AND, IN PARTICULAR, ON THE IMPLEMENTATION OF THE DECLARATION ON THE RIGHT TO DEVELOPMENT

Written statement submitted by the International Movement ATD Fourth World, a non-governmental organization in consultative status (category I)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[11 January 1992]

What is the fate of the poorest of the poor throughout the world?

1. Support for fledgling democracies, the promotion of a new world political and economic order, the opening-up towards the East: all hold out promise for those who defend human rights. However, entire populations are currently

suffering the deprivation, uncertainty and violence engendered by these profound upheavals. Elsewhere, in various parts of the world, others suffer the onslaught of epidemics, famine, exoduses, of warfare and its painful aftermath.

2. Against such a background, it hardly seems reasonable to call attention yet again to the poorest of the poor and to their plea for help. The times would seem more suited to a general mobilization on behalf of those who are threatened by these scourges or have already fallen prey to them and to support those striving to rebuild their countries. However, individuals and small grass-roots NGOs everywhere can testify that the poorest families are the ones most afflicted by the results of these tragic circumstances. They can testify to the neglect and the unbearable conditions in which these families live or survive.

3. The international community can no longer ignore this. It can, for example, no longer ignore the breakdown in solidarity with the poorest members of the population in those countries where shortages have become too great. The bitter struggle for survival divides populations. The strongest fall back on themselves, while the poor manage as best they can, but in spite of superhuman efforts to provide for their own, the extremely poor seem to depend on all the others and feel more than ever despised and rejected.

4. Nor is it possible for the international community to forget that, even in the industrialized countries, too much insecurity causes entire families and population groups to remain cut off or to slide into extreme poverty, where they are beyond the reach of rights or responsibilities. Men, women and children see the family break up from destitution, undergo the humiliation of soup kitchens, and young people are forced into unemployment by illiteracy and lack of training.

5. The consequences of the suffering inflicted on these men and women, these young people and children, will leave deep scars in their very being.

<u>The poorest still struggle on alone</u>

6. In such extreme circumstances, they carry on the struggle to survive, to keep the flame of hope alive. And in these very same circumstances, they expect to be treated as human beings, in the fullest sense.

7. In one extremely poor region, which received no assistance from outside, a women said: "The worse thing is that my children see their mother, who has always struggled to make ends meet, begging." When you can speak only of your material expectations, when you can only look on yourself as a beggar, it is as soul destroying as being without the barest minimum in life.

8. The indivisibility of human rights is a fact and a demand clearly expressed by the poorest families, even when the pressing need to achieve one's economic rights would seem to leave no room for any other worries.

With whom do we share the years of hardship as well as the years of respite?

9. The founder of the International Movement ATD Fourth World, Father Joseph Wresinski has taught us, along with the poorest, to ask ourselves this question at all times. Should we not always and everywhere put the families and the voiceless groups of people broken by poverty at the very centre of our common concern? What place will be found for these people - the ones who will have paid the heaviest price for the changes and the scourges - when development and reconstruction begin again? The international community now faces this critical question. The history of the industrialized countries has taught us that those who are marginalized in times of hardship are likely to remain marginalized when growth resumes. However, this is not inevitable. The international community is capable of developing an understanding of the ways and means needed to make sure that the poorest can become partners in change, and thus guarantee that real headway is made in human rights.

Appreciation and recognition for the poorest as defenders of human rights

10. In their day-to-day struggle to avoid being utterly crushed, the men, women, young people and children in these sectors of the population defend everyone's basic rights. They reveal everyone's essential aim; to safeguard one's dignity. Refusal to accept destitution lies behind their daily acts, acts that are frequently misunderstood and cannot protect them from the burden of being kept on the outside until they die.

11. Father Joseph Wresinski showed us that this refusal by the poorest, and by those who stand alongside them, to accept their fate, is based on the profound conviction that every human being is entitled to hold responsibility, and the means to shoulder it, for the common good. Hence we consider every human being as inseparable from his fellows, an integral part of an indivisible mankind which cannot do without the participation and contribution of its poorest members. Without their participation, how would mankind achieve the ideals of democracy and human rights it has set for itself?

Getting through to the poorest and letting them get through to us

12. In the eyes of Father Joseph Wresinski, getting through to the poorest was not merely a matter of counting them, of determining their geographical or social position, at the risk of providing them with programmes or with assistance thought up by others, often for people better off than they. It meant far more: appreciating their capacity to contribute the fruits of their experience and their thoughts to the society they live in, and particularly their ability to take a fresh look at human rights and their essential indivisibility. It also meant making them the first partners in human rights programmes.

13. This approach to "getting through to the poorest and letting them get through to us" is both political and human. It is above all global, and poses the question of extreme poverty in terms of the violation of human rights as a whole. At one and the same time it brings together:

Knowledge gained with and by the poorest themselves, not only of their living conditions, but also of their aspirations, their thoughts and their experience;

A new and original experience of a partnership with those rejected by society;

Measures implemented not only in the field, but at a political level.

The study "Human rights and extreme poverty": a positive step for human rights

14. This determination to acquire direct knowledge of the poorest and thus turn them into the leading partners of the study "Human rights and extreme poverty" was made clear by the Commission on Human Rights in resolution 1991/14. By giving an opportunity to speak to the people who have never been consulted in their own right, this study will be a positive step for human rights. The Commission thus responds to the expectations of the poorest for recognition as human beings and for their efforts to reject poverty, not only for themselves, but for others.

15. Accordingly, the Commission on Human Rights should ensure that this innovative investigative approach is maintained throughout the study. In order to acquire a thorough grasp of how individuals and families trapped by poverty actually live, without running the risk of destabilizing them or jeopardizing them, it is essential to conduct the study with great discretion and caution. Neither the identity, the whereabouts or even the country in which the people live should be mentioned; the methodology as a whole should be designed to develop a deeper understanding, and not to level accusations. In the NGO Fourth World Committee, several international NGOs have already committed themselves to this approach, in conjunction with their members in the field.

16. The International Movement ADT-Fourth World therefore, requests the Commission on Human Rights:

To continue to foster a proper awareness, with the participation of the poorest, by preserving the originality of the approach used in the study "Human rights and extreme poverty" and by requesting the Sub-Commission to consider the study as a matter of priority and to appoint, at its forthcoming session, a rapporteur to complete it;

To ensure that an initial document under this study is available to place the issue of extreme poverty on the agenda of the World Conference on Human Rights in 1993, so that the Conference can assess the effectiveness of international human rights instruments in the light of the actual experience of the poorest, as conveyed by the poorest themselves or by the NGOs who stand alongside them or who represent them;

To ensure that United Nations emergency measures and development programmes take account of the indivisible nature of human rights, and thus respond to the expectation expressed by the poorest that they will be regarded as human beings in the fullest sense, even in circumstances of utter destitution.

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(122)

UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/1992/NGO/9
16 January 1992

ENGLISH
Original: SPANISH

COMMISSION ON HUMAN RIGHTS
Forty-eighth session
Agenda item 10

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED
TO ANY FORM OF DETENTION OR IMPRISONMENT

Written statement submitted by the World Confederation of Labour and the World Federation of Trade Unions, non-governmental organizations in consultative status (category I), by the American Association of Jurists, the International Association of Democratic Lawyers, the World Association of Former United Nations Interns and Fellows, the International Indian Treaty Council, the International Federation Terre des Hommes, the World Student Christian Federation, the Women's International League for Peace and Freedom, the International League for the Rights and the Liberation of Peoples, the International Movement for Fraternal Union Among Races and Peoples, Pax Christi International and Pax Romana, non-governmental organizations in consultative status (category II) and by the Movement Against Racism and for Friendship Among Peoples and the International Peace Bureau, non-governmental organizations on the Roster

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[15 January 1992]

DRAFT DECLARATION ON THE PROTECTION OF ALL PERSONS
FROM ENFORCED DISAPPEARANCE

1. The open-ended inter-sessional working group to consider the draft declaration on the protection of all persons from enforced or involuntary

disappearance met from 28 October to 8 November 1991. After two weeks of intensive work, the draft Declaration, which is to be submitted to the Commission on Human Rights at its forty-eighth session, was approved. The work of the group was based on the draft Declaration adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities and on the written and oral observations made by many States and non-governmental organizations.

2. The draft Declaration is the outcome of several years of reflection and debate within a number of national and international bodies. The undersigned non-governmental organizations are of the view that the Declaration should be approved by the Commission on Human Rights at its forty-eighth session, as an invaluable contribution to the manifold efforts that are being made to prevent and punish the scourge of enforced disappearance of persons, which afflicts many countries, as is apparent from the reports of the Working Group on Enforced or Involuntary Disappearances of the Commission on Human Rights.

3. The undersigned non-governmental organizations are nevertheless deeply concerned by the decision of the open-ended working group, in the absence of a consensus, to remove universal jurisdiction from article 14 of the draft approved by the Sub-Commission.

4. Universal jurisdiction is not merely an aspiration of those working gradually to develop international law, but also an element of several binding international instruments, and may thus be described as a component of jus cogens. Universal jurisdiction is enshrined, inter alia, in the International Convention on the Suppression and Punishment of the Crime of Apartheid, (arts. IV and V), in the Convention on the Prevention and Punishment of the Crime of Genocide (arts. V and VI), in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (arts. 5 and 7) and, at the regional level, in the Inter-American Convention to Prevent and Punish Torture (art. 12).

5. More recently, in resolution 44/34, adopted on 4 December 1989, the United Nations General Assembly adopted without a vote the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, whose article 9 also establishes universal jurisdiction. On the same day, the General Assembly adopted, also without a vote, resolution 44/39, in which it requested the International Law Commission, bearing in mind the need to keep under review those topics ... which may be suitable for the progressive development of International Law, when considering the "Draft Code of Crimes against the Peace and Security of Mankind", to address the question of establishing an international criminal court or other international criminal trial mechanism with jurisdiction over persons alleged to have committed crimes which may be covered under such a code.

6. With regard to the crime of enforced disappearance in particular, universal jurisdiction was enshrined in article 14 of the draft Declaration adopted by the Sub-Commission (E/CN.4/Sub.2/1990/32) and is also to be found in article 5 of the draft Inter-American Convention on Forced Disappearances of Persons, prepared by the Inter-American Commission on Human Rights for submission to the General Assembly of the Organization of American States.

7. In addition, the justiciable nature of human rights violations is an element of international law which is binding on all States. At its session held in Bogotá, Colombia, in June 1991, the Permanent People's Tribunal, composed of eminent persons and jurists from a number of countries, made the following declaration:

> "The relevant international instruments conceive human rights as being by their very nature justiciable. This is established by article 8 of the Universal Declaration of Human Rights, article 18 of the American Declaration, article 13 of the European Convention, article 2 of the International Covenant on Civil and Political Rights and article 25 of the American Convention. Pursuant to these articles, any violation of human rights must be referred to the courts. Consequently, if the violation involves a criminal offence, it entails the international, and not merely the domestic obligation to try and to punish the offence. The international human rights instruments establish a human right to justice if human rights are violated..." 1/

8. In particular, the draft Declaration has been broadly inspired by the Convention against Torture, which is quoted in the preambular part of the draft. In addition, article 1 states that enforced disappearance constitutes a violation of the "right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment". For its part, the Inter-American Court of Human Rights has declared that enforced disappearance implies cruel and inhuman treatment (Velázquez Rodriguez and Godínez Cruz decisions). Consequently, there is no doubt that the offence of torture is part of the offence of enforced disappearance. This means that in addition to the international obligation applying to all States by virtue of the nature, jus cogens, of universal jurisdiction and the concomitant international obligation arising from the justiciable nature of violations of human rights, the 76 States that have signed the Convention against Torture in particular are obliged to accept universal jurisdiction by virtue of articles 5 and 7 of the Convention. It should be noted that none of the signatory States have entered reservations in respect of those articles. In addition, the universal jurisdiction established in the Convention against Torture extends to enforced disappearances, which as we have seen, imply torture.

9. Accordingly, in addition to being a regrettable reversal of the prevailing trend of the norms adopted by the United Nations and at the regional level, removal of universal jurisdiction from the draft Declaration would be a transgression of the 1969 Vienna Convention on the Law of Treaties, and in particular of its articles 18 (obligation of States not to defeat the object and purpose of a treaty); 26 (pacta sunt servanda); 38 (rules in a treaty become binding through international custom) and 53 (priority of a peremptory norm of general international law - jus cogens).

1/ Proceso a la impunidad de crimenes de lesa humanidad en América Latina, 1989-1991. Permanent People's Tribunal, page 515. Edited by the International League for the Rights and the Liberation of Peoples - Colombian Section. Bogotá, Colombia, June 1991.

10. It has been claimed that universal jurisdiction constitutes interference in the domestic affairs of States. This is a strained but false argument: universal jurisdiction, as developed in the instruments that have been adopted and in regional and international draft instruments is a promising step forward towards universal protection of human rights and in no way affects the legitimate exercise of sovereignty by each of the member States of the international community.

11. For all these reasons, the undersigned non-governmental organizations request the Commission on Human Rights, at its forty-eighth session, to adopt the draft Declaration on the Protection of All Persons from Enforced Disappearance, as approved by the open-ended working group on 8 November 1991 (E/CN.4/1992/19), with the sole exception that the original wording of the second paragraph of article 14 should be restored, as approved by the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its forty-second session, and which was as follows: "This provision shall apply regardless of the individual's nationality or the place where the offence was committed."